

Notice of Allowability**Application No.**

10/000,359

Applicant(s)

HOLTHAUS, JOEL F.

Examiner

David T. Fox

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers filed 17 May 2004.
2. ☒ The allowed claim(s) is/are 1-5,7-9,11,19 and 33-52 renumbered as 1-30.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☒ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input checked="" type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

REQUIREMENT OF ALLOWANCE UNDER 37 CFR 1.801-1.809

The Deposit Statements on page 34 of the specification and on pages 13-14 of the Response of 26 January 2004 are deemed in accordance with 37 CFR 1.801-1.809. Since the application is otherwise in condition for allowance except for the needed deposit of seed, and since the Office has received written assurance that an acceptable deposit will be made on or before payment of the issue fee, the Office is authorized to mail Applicant a Notice of Allowance and Issue Fee Due together with a requirement that the needed deposit be made within THREE (3) MONTHS of the mail date of this letter (see 37 CFR 1.809(c)).

As set forth in 37 CFR 1.809(c), Applicant is required to deposit 2500 seeds of the claimed plant within THREE (3) MONTHS of the mail date of this letter; thus the time for making the deposit is on or before the payment of the issue fee. Although the time period for paying the issue fee cannot be extended, the time period for satisfying the deposit requirement may be extended under the provisions of 37 CFR 1.136. Failure to make the needed deposit of 2500 seeds will result in abandonment of the application for failure to prosecute.

Applicant is reminded that once the deposit of seed has been made, information regarding the date of deposit, description of the deposited material including number of seeds deposited, name and address of the depository, and the accession number must be added to the specification in order to comply with 37 CFR 1.809(d). In addition, claims 1, 9, 19, 34, and 48 must be amended to replace the blank " " with the appropriate Accession Number. Amendments to the specification and the claims should

be submitted before the payment of the issue fee as an Amendment After Allowance under 37 CFR 1.312. If the amendment is received after the payment of the issue fee, the same should be made under the provisions of 37 CFR 1.312(a) and a petition filed under 37 CFR 1.183 to waive the requirement of 37 CFR 1.312 that the amendment be filed before or with payment of the issue fee; that is, it must be accompanied by a fee in accordance with 37 CFR 1.17(i) and a petition which includes a "showing of good and sufficient reasons why the amendment is necessary and was not earlier presented, and why justice requires waiver of the rule."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is (571) 272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached on (571) 272-0804. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

May 28, 2004

DAVID T. FOX
PRIMARY EXAMINER
GROUP 180-1638

A handwritten signature in black ink, appearing to read "David T. Fox", written over the printed name and title.